

## **CHAPTER 18.5-02-04 OTHER FORMAL MEDIATION**

### **Section**

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### **18.5-02-04-01. Eligibility for formal mediation.**

1. Parties not eligible for formal mediation for secured debts under chapter 18.5-02-03 may request formal mediation under this chapter.
2. To be eligible for assistance pursuant to North Dakota Century Code chapter 6-09.10, a farmer must be a farmer as defined in subsection 2 of North Dakota Century Code section 6-09.10-01.
3. Any creditor required to participate in mediation pursuant to 7 U.S.C. 5101 et seq., Pub. L. 100-233, title V, January 6, 1988, 101 Stat. 1663, may not be required to participate in mediation under this chapter.

**History:** Effective January 1, 1992.

**General Authority:** NDCC 6-09.10-09

**Law Implemented:** NDCC 6-09.10-01, 6-09.10-03, 6-09.10-04

**18.5-02-04-02. Request for formal mediation.** A farmer or other person may request formal mediation by filing a request for formal mediation with the administrator. The request for formal mediation must be in writing and on forms provided by the administrator. The request for formal mediation must be deemed filed on the date it is received by the administrator. A farmer or other person may request formal mediation proceedings even though the farmer has previously participated in informal mediation proceedings or has previously participated in secured debt formal mediation. The request for formal mediation may be filed by mailing it by first class, or by delivering to:

Administrator  
Agricultural Mediation Service  
Department of Agriculture  
State Capitol  
600 East Boulevard Avenue  
Bismarck, North Dakota 58505

**History:** Effective January 1, 1992.

**General Authority:** NDCC 6-09.10-09

**Law Implemented:** NDCC 6-09.10-03

### **18.5-02-04-03. Formal mediation proceedings.**

1. Upon receipt of a request for formal mediation, the administrator may assign a mediator to conduct formal mediation proceedings. If a farmer requests assistance, the administrator may assign a negotiator to assist the farmer in preparing for formal mediation and to negotiate on behalf of the farmer during the mediation.
2. When any other person requests formal mediation, the administrator shall notify the farmer of the request, by first-class mail, and obtain the farmer's signed statement consenting to formal mediation and a list of other potential parties to the mediation.
  - a. If the farmer refuses to consent to formal mediation, the administrator shall dismiss the formal mediation and give notice of the dismissal to the other party requesting mediation. After dismissal of the formal mediation, the other person may proceed to enforce any claims against the farmer.
  - b. If the farmer consents to formal mediation, the farmer shall provide to the administrator a list of all potential parties to the mediation. Upon consent of the farmer to formal mediation, the administrator shall send a meeting notice to the farmer and all other persons. The notice must set forth the time and place for an initial mediation meeting among the farmer and other persons. The initial mediation meeting must be held within forty-five days after the filing of the request for mediation, unless the farmer or other person requests and receives, for good cause, an extension from the administrator.
3. When a farmer requests formal mediation, the farmer shall provide a list of all potential parties to the mediation to the administrator. The administrator shall send a meeting notice to the farmer and all other potential parties. The notice must set forth the time and place for an initial mediation meeting among the farmer, other persons, and the mediator. The initial meeting must be held within forty-five days after the filing of the request for mediation unless the farmer or other person requests and receives, for good cause, an extension from the administrator. The administrator may dismiss the mediation if the farmer fails to furnish a list of potential parties within fifteen days of the request for formal mediation.
4. The mediator may call additional meetings among the farmer and other persons or between the farmer and any party to the mediation, as the mediator deems appropriate, following the initial mediation meeting and before the filing of the final mediation report.

**History:** Effective January 1, 1992.

**General Authority:** NDCC 6-09.10-09

**Law Implemented:** NDCC 6-09.10-03, 6-09.10-04

**18.5-02-04-04. Mediation report.** Within seventy-five days after the filing of the request for formal mediation, the mediator shall prepare and file with the administrator a mediation report summarizing the outcome of the formal mediation. If additional mediation meetings are held either before or after the seventy-five-day period following the filing of the request for formal mediation, so that the mediator is unable to prepare and file the mediation report within the seventy-five-day period, the mediator shall prepare and file the mediation report within ten days of the conclusion of those additional mediation meetings. The administrator shall send a copy of the mediation report to the farmer and other participating parties. If mediation results in an impasse between the farmer and other persons, the mediation report must contain a discharge from formal mediation and the parties may proceed to enforce any claims against each other. Once the mediation report is filed with the administrator the formal mediation meetings are closed, unless a declaration of not participating in good faith is issued by the mediator, in which case mediation proceedings may be reopened pursuant to section 18.5-02-04-07. If mediation proceedings are reopened, the mediator may file an amended mediation report, if necessary. Otherwise, formal mediation by the same participants may only begin again pursuant to a new request for mediation.

**History:** Effective January 1, 1992.

**General Authority:** NDCC 6-09.10-09

**Law Implemented:** NDCC 6-09.10-03, 6-09.10-04

**18.5-02-04-05. Duties of the mediator.** During the mediation process, the mediator shall:

1. Listen to the farmer and other persons desiring to be heard.
2. Attempt to mediate between the farmer and the other persons.
3. Advise the farmer and other persons as to the existence of available assistance programs.
4. Determine what other parties should be involved in the mediation.
5. Advise, counsel, and assist the farmer and other persons in attempting to arrive at an agreement for the future conduct of relations among them.
6. State, at the beginning of the mediation process, that the mediator's role is that of a facilitator and not a negotiator for either party.

**History:** Effective January 1, 1992.

**General Authority:** NDCC 6-09.10-09

**Law Implemented:** NDCC 6-09.10-03, 6-09.10-04

**18.5-02-04-06. Confidentiality of mediation proceedings.** As a condition for participation in mediation and except as otherwise provided in this section, all parties shall agree to keep confidential the substance of all discussions conducted

during the course of mediation. The parties may disclose confidential information only as permitted by North Dakota Century Code section 6-09.10-10.

**History:** Effective January 1, 1992.

**General Authority:** NDCC 6-09.10-09

**Law Implemented:** NDCC 6-09.10-03, 6-09.10-04

**18.5-02-04-07. Good faith participation.** All participants in mediation shall participate and act in good faith. Because mediation is an attempt to reach a voluntary settlement, the fact that the parties cannot reach an agreement to resolve the farmer's problems is not, standing alone, evidence of bad faith. Any party to formal mediation may request a declaration from the mediator that another party is not participating in good faith. A mediator shall issue a declaration, including the reasons for the declaration, when the mediator determines that the party against whom the declaration is sought:

1. Has failed to attend any meeting called by the mediator without good cause;
2. Has taken steps to initiate legal action against a participating party or to enforce the obligation of a party during the formal mediation proceedings;
3. Has failed to produce, at the request of the mediator, within a reasonable time after requested, any relevant information within the party's possession;
4. Has failed to respond within ten business days to any proposal; or
5. Has engaged in other behavior that evidences an intention not to honestly and sincerely participate in the effort to resolve the farmer's problems.

If a mediator determines that a party is not participating in good faith, an affidavit to that effect may be filed by the mediator with the administrator indicating the reasons for the determination. If the mediator finds that any party is not participating in good faith, the mediator may terminate the mediation proceedings and issue the mediation report or continue or reopen the mediation proceeding for up to an additional sixty days to attempt to find an acceptable solution to the farmer's problems.

**History:** Effective January 1, 1992.

**General Authority:** NDCC 6-09.10-09

**Law Implemented:** NDCC 6-09.10-03, 6-09.10-04